

OCA FILE *Leg*5 May 1988
OCA 88-1432

MEMORANDUM FOR THE RECORD

SUBJECT: Federal Employees Liability Reform and Tort
Compensation Act of 1988, H.R. 4358

1. On 5 May 1988, I spoke with Janet Potts, counsel on the Administrative Law Subcommittee of the House Judiciary Committee, with respect to changing the language "common law tort" to "state law tort" in the findings and purposes section of the above-captioned bill. I had informed her previously that the Agency believed this change would bring the bill more in line with the Westfall v. Erwin decision and clarify the scope of the law. I also told her that I thought the Department of Justice (DOJ) was on board with such a change in general, but perhaps had not placed it in the bill because of time constraints. She stated that she had been trying to reach DOJ to discuss the change, but had been unsuccessful.

2. I then telephoned Faith Burton of DOJ to discuss the proposed change with her. She said that DOJ would not agree to it because it may broaden the scope of the law to cover strange statutory torts. She also expressed her dissatisfaction with our having dealt directly with the Judiciary subcommittee without first clearing it with them. I told her I thought they had said they would agree to this change at a previous meeting and, because of time constraints, I had dealt directly with Ms. Potts after the subcommittee markup. I further explained that the Agency was not trying to get ahead of DOJ on this issue and that if we were I would not have telephoned her to check on DOJ's agreement with the change. I apologized if this caused a problem and said I would tell Ms. Potts that we were no longer pursuing the change. Ms. Burton continued to show concern that this may become a matter that would place the Administration in a bad light. I told her I did not think that was the case at all.

3. I then spoke with Ms. Potts to tell her that, since this was not an intelligence issue per se, although the Agency may in all likelihood have more employees sued than most other agencies because of the nature of its work and because of public perceptions, we were not going to pursue this change. I explained that there was some misunderstanding with DOJ about this. She seemed satisfied with the explanation of DOJ's fear of broadening the scope of liability and said she would speak with Ms. Burton.



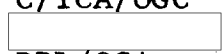
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